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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re M.C., a Person Coming  
Under the Juvenile Court Law.

B289672

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Los Angeles County  
Super. Ct. No. DK21523A

Plaintiff and Respondent,

v.

CHARLES C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Nancy Ramirez, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Charles C. (father) appeals from the juvenile court's jurisdiction findings and disposition orders declaring his daughter, M.C. (born in 2010), a dependent of the court and removing her from father's and her mother's custody.<sup>1</sup> Father argues insufficient evidence supports the court's jurisdiction findings that his hitting M.C. with a belt constituted an inappropriate form of discipline that placed the child at risk of serious physical harm. Father also contends insufficient evidence supports the court's order removing M.C. from his custody. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. The Referral**

M.C. came to the attention of the Department of Children and Family Services (Department) in January 2017. An anonymous caller reported that M.C. was not safe in father's custody because father was a registered sex offender, he kept guns inside his home where M.C. could access them, and he once pulled a gun on M.C.'s mother and threatened to kill her if she did not give him custody of M.C. The caller also claimed mother was an alcoholic and a drug user.

Shortly after receiving the referral, the Department interviewed the family. Mother and father split custody of M.C., but the child lived primarily with mother. Mother lived with one of her friends, and father lived with his girlfriend. Father was required to register as a sex offender because he had been

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<sup>1</sup> Sara V., M.C.'s mother (mother), is not a party to this appeal.

“convicted” of a sex offense when he was 13 years old. M.C. felt safe living with both parents.

When asked about living with father, M.C. told a social worker that father would “whoop” her buttocks with a belt when he became angry. Although M.C. didn’t know if father had ever caused her skin to bruise, she told the social worker that her skin “burn[ed],” and she would sometimes urinate in her pants, when father hit her with a belt. A law enforcement officer who examined M.C. did not observe any bruises or visible marks on M.C.’s body, and mother denied ever seeing any marks or bruises on the child’s body.

Father described himself as a “strict dad” who protects his children, but he denied that he had ever hit M.C. with a belt. Instead, father claimed, he would discipline M.C. by making her write sentences, by placing her on timeout, or by scolding her.

## **2. M.C.’s Dependency Petition and Detention Hearing**

On March 9, 2017, the Department filed a dependency petition on M.C.’s behalf. As later amended and sustained by the court, the petition alleged:

A-1 and B-1: “The child[’s] father ... inappropriately disciplined the child by striking the child’s buttocks [with] a belt. Such inappropriate discipline was excessive and caused the child unreasonable pain and suffering. The inappropriate discipline of the child by the father endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage.”

B-2: “The child[’s] mother ... has a history of illicit drug use and is a current user of methamphetamine, which renders the mother incapable of providing regular care for the child. The mother used methamphetamine while the child was under the

mother's care and supervision. The child is of such tender age that the child requires constant care and supervision. Said substance abuse by the child's mother endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger."<sup>2</sup>

At M.C.'s detention hearing, the court found the Department alleged a prima facie case under Welfare and Institutions Code<sup>3</sup> section 300, subdivisions (a), (b), and (d). The court detained M.C. from her parents' custody and placed her in shelter care. The court ordered the Department to provide mother and father a minimum of two monitored visits per week.

### **3. The Department's Investigation**

The Department interviewed the family a second time in late March and early April 2017. M.C. reported that father spansks her using a belt and his hands. Father would make M.C. pull down her pants (but not her underwear) and bend over so that he could spank her buttocks "very hard." M.C. had seen a "big mark" spanning from the top to the bottom of her buttocks after father struck her with a belt. M.C. demonstrated for the social worker how father spansks her by striking a belt against a couch.

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<sup>2</sup> The petition also included allegations based on father's alleged substance abuse (Welf. & Inst. Code, § 300, subd. (b) (B-3 allegation)) and criminal history and status as a registered sex offender (Welf. & Inst. Code, § 300, subds. (b) & (d) (B-4 and D-1 allegations)). The court dismissed those allegations at the jurisdiction hearing.

<sup>3</sup> All undesignated statutory references are to the Welfare and Institutions Code.

Father “whoop[ed]” M.C. in front of his girlfriend and her children, but father’s girlfriend would “ignore[] it.” Father would hit M.C. if she “push[ed] somebody” or if she was “doing bad stuff like bugging [father’s girlfriend] when [M.C. was] bored and [didn’t] know what to do.” M.C. told the Department that she had once “peed in [her] pants because [father] kept on hitting [her] really really hard ... .”

Mother told one of the Department’s social workers that father had admitted to her that he once struck M.C. Mother described an incident when father became upset and hit M.C. after he saw her show his girlfriend’s son the elastic band of her underwear. Mother could not recall how father struck M.C., but she claimed it was the first time father had ever done anything like that. When mother saw M.C. about 24 hours after the incident, M.C. did not have any bruises on her body. M.C.’s foster mother also reported that father admitted to her that he had used a belt to spank M.C.

Father continued to deny that he had ever hit M.C. He claimed mother was coaching M.C. to falsify allegations against him so mother could obtain sole custody of the child. Father maintained that he would only send M.C. to her room or make her stand for several minutes when he punished her. Because father had been “whooped” as a kid, he believed M.C. would have visible marks on her body if he had hit her with a belt.

In May 2017, a forensic nurse interviewed M.C. M.C.’s account of father’s conduct during her interview with the nurse was consistent with the accounts she had provided the Department in January and March 2017.

M.C. told the nurse that father either “whoops” her with a belt or makes her go to her room when she gets in trouble. Father

sometimes makes M.C. pull down her pants so he can “whoop” her buttocks over her underwear. Father uses the end of the belt with holes in it, and he often leaves a big red mark or line on M.C.’s buttocks when he hits her. M.C. was not sure whether father had ever caused the skin on her buttocks to bruise. M.C. told the nurse she would cry after father hit her.

M.C. described the most recent incident when father hit her with a belt. Father overheard M.C. tell one of his girlfriend’s sons that her underwear had ripped. Father became angry that M.C. was talking to a boy about her underwear, so he whooped her “really hard” and caused M.C. to urinate in her pants.

#### **4. The Jurisdiction and Disposition Hearings**

On September 5, 2017, the court conducted a contested jurisdiction hearing. Father and his girlfriend testified. Father denied ever striking M.C. with a belt, and father’s girlfriend claimed she never saw father “whoop” or otherwise hit M.C. When asked about the incident when M.C. told his girlfriend’s son about her underwear, father admitted that he was angry with M.C., but he claimed he only made her take a timeout. Father’s girlfriend, who was in a different room at the time, did not hear anything that sounded like spanking come from the room where father was disciplining M.C. According to father, M.C. peed her pants while she was standing in the corner of the room on timeout.

The court sustained the A-1, B-1, and B-2 allegations. As to the A-1 and B-1 allegations, the court found M.C. was credible in all of her accounts of how father had struck her with a belt because the child had consistently described father’s conduct throughout the Department’s investigation. The court continued the matter for a disposition hearing.

Before the disposition hearing, father submitted a letter from the Salvation Army Bell Shelter stating that he had completed eight non-violent parenting sessions and eight individual counseling sessions. Father's classes focused on, among other things, understanding how to parent without using violence, understanding anger and self-regulation, and understanding child and brain development. The Department was unable to contact the shelter's counselor to confirm whether father's parenting and counseling sessions addressed case-related issues.

On April 17, 2018, the court conducted the disposition hearing. The court declared M.C. a dependent of the court and ordered her removed from mother's and father's custody. The court awarded father monitored visits with M.C. and ordered the Department to provide him reunification services, including parenting classes and individual counseling to address case-related issues.

Father timely appealed from the court's disposition orders.

## **DISCUSSION**

Father contends insufficient evidence supports the jurisdiction findings against him and the disposition orders removing M.C. from his custody. As we explain, substantial evidence supports the challenged findings and orders.

### **1. Applicable Law and Standard of Review**

At the jurisdiction stage of a dependency proceeding, the Department must prove by a preponderance of the evidence that the child is a dependent of the court as described by section 300. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992 (*Yolanda L.*)) A juvenile court may exercise dependency jurisdiction over a child

under section 300, subdivision (a), if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally ... by the child’s parent.” A court may also exercise jurisdiction over a child under section 300, subdivision (b)(1), if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child ... .” Section 300, subdivision (b)(1) does not require the department to prove, by a preponderance of the evidence, neglectful conduct by a parent. (*In re R.T.* (2017) 3 Cal.5th 622, 624, 629 [provision authorizes dependency jurisdiction without finding that parent is at fault or blameworthy for failure or inability to supervise or protect child].)

“The juvenile court need not wait until a child is seriously injured to assume jurisdiction if there is evidence that the child is at risk of future harm from the parent’s negligent conduct. [Citation.]” (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 993.) In determining whether the parent’s negligent or harmful conduct is likely to recur in the future, courts may consider evidence of the parent’s past conduct. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) Likewise, a parent’s denial of wrongdoing or failure to recognize the negative impact of his conduct is a relevant factor in the court’s determination of risk under section 300. “[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293 (*A.F.*).) “One cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)



We review jurisdiction findings and disposition orders removing a child from his or her parent’s custody for substantial evidence. (*In re D.C.* (2015) 243 Cal.App.4th 41, 55.) We will affirm the findings if they are supported by evidence that is reasonable, credible, and of solid value. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) “We do not evaluate the credibility of witnesses, attempt to resolve conflicts in the evidence or determine the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*Ibid.*)

**2. Substantial evidence supports the juvenile court’s jurisdiction findings.**

Father contends insufficient evidence supports the court’s findings that his use of a belt to strike M.C. caused the child serious harm, or placed her at risk of suffering serious harm, to establish jurisdiction under section 300, subdivisions (a) and (b).<sup>4</sup> Specifically, father argues his use of a belt to strike M.C. on the

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<sup>4</sup> Although father does not challenge the finding establishing jurisdiction over M.C. based on mother’s conduct, father’s challenges to the jurisdiction findings against him are justiciable because he also challenges the court’s disposition orders, which are based in part on the jurisdiction findings against father. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 [Courts may “exercise [their] discretion and reach the merits of a challenge to any jurisdictional finding when the finding ... serves as the basis for dispositional orders that are also challenged on appeal ... .”].)

buttocks constituted an appropriate form of physical discipline because he never inflicted serious physical injuries on the child, and he only struck the child when she needed to be disciplined. We disagree.

In the context of disciplining a child, a parent is not absolutely prohibited from using corporal punishment. For example, a parent may administer “reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.” (§ 300, subd. (a).) But, as the statute suggests, a parent’s right to administer punishment is not without limits. “Whether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive.’” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641 (*D.M.*)).

Here, even if we were to assume father’s use of a belt to strike M.C. was “genuinely disciplinary,” ample evidence supports a finding that father’s conduct was not always warranted by M.C.’s behavior. For example, M.C. reported that father would strike her buttocks with a belt when she engaged in innocuous behavior, such as when she “bugged” father’s girlfriend because she was bored. Father also used excessive force when he would strike M.C. with a belt. M.C. reported that father would strike her buttocks “very” hard, sometimes with only her underwear covering her skin. And on at least one occasion, father struck M.C. “really really hard” multiple times and with such force that he caused her to urinate in her pants. M.C. also

reported that it felt like her skin was “burn[ing],” and she would often cry, after father struck her buttocks with a belt. Although it is unclear whether father ever caused M.C.’s skin to bruise, his “whoop[ings]” would often leave large red marks on M.C.’s buttocks.

This case is distinguishable from *D.M.*, on which father relies to argue his use of a belt to discipline M.C. was appropriate. In *D.M.*, the mother spanked her child on “rare” occasions using her bare hand or a sandal. (*D.M.*, *supra*, 242 Cal.App.4th at pp. 637–638.) The mother’s spankings never left a mark on the child, and the child reported that the spankings did not hurt very much. (*Ibid.*) In this case, on the other hand, father “whooped” M.C. with a belt on multiple occasions. M.C. told the Department that on at least one occasion, father “kept on” hitting her “really really hard” with a belt. Father hit M.C. so hard that he left large red marks on her buttocks, caused her to urinate in her pants, and made her skin feel like it was “burn[ing].”

Father’s reliance on *Gonzalez v. Santa Clara Dept. of Social Services* (2014) 223 Cal.App.4th 72 (*Gonzalez*) is also misplaced. First, *Gonzalez* did not involve a dependency proceeding and, as a result, did not address what type of physical discipline is appropriate under section 300. Rather, *Gonzalez* addressed whether a mother had been properly reported to the Child Abuse Central Index under the Child Abuse and Neglect Reporting Act because she had spanked her child with a wooden spoon and produced visible bruises. (*Gonzalez*, at p. 75.) Second, the mother in *Gonzalez* admitted she had struck her child’s buttocks with a wooden spoon, and she described in detail why she believed it was necessary to strike her child using a wooden spoon because

“less stringent” forms of discipline were ineffective in regulating her child’s behavior. (*Id.* at pp. 76–77.)

Unlike the mother in *Gonzalez*, father refused to accept responsibility for his conduct throughout the Department’s investigation. Specifically, leading up to and throughout M.C.’s jurisdiction hearing, father repeatedly denied to the Department’s social workers and the court that he had ever hit M.C., despite M.C.’s repeated and consistent accounts of father’s conduct as well as evidence that father had admitted to mother and M.C.’s foster mother that he had hit M.C. (See *A.F.*, *supra*, 3 Cal.App.5th at p. 293 [a parent’s denial of wrongdoing is relevant to the court’s determination of risk].)

In sum, substantial evidence supports the court’s findings that father’s use of a belt to strike M.C.’s buttocks constitutes inappropriate discipline sufficient to establish dependency jurisdiction under section 300, subdivisions (a) and (b).

**3. Substantial evidence supports the court’s disposition orders.**

Father next contends the court erred in ordering M.C. removed from his custody. Specifically, he argues there is insufficient evidence to establish that M.C. would face a substantial danger to her safety and physical health if she were to remain in father’s custody.

If the court finds that the child falls within the court’s jurisdiction, then the court must determine at the dispositional stage whether the child should continue to reside with his or her parent, or whether the child should be placed somewhere outside of his or her parent’s custody. (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992.) To support a removal order, the Department must prove by clear and convincing evidence that there is: (1) a risk of

substantial harm to the child if returned home; and (2) a lack of reasonable means short of removal to protect the child's safety. (*Ibid.*) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re T.V.* (2013) 217 Cal.App.4th 126, 135–136.) When determining whether removal is appropriate, the court may consider the parent's past conduct and the present circumstances. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*.)

Here, father has engaged in a pattern of inappropriate physical discipline when he becomes angry with M.C. Father has struck M.C. with a belt on multiple occasions, and his conduct appears to have escalated over time. For example, M.C. told the forensic nurse that, during the most recent incident, father repeatedly struck her with a belt with such force that it caused her to urinate in her pants. And, as noted above, father repeatedly denied throughout M.C.'s dependency proceedings that he had ever hit the child with a belt or that he has issues with using inappropriate physical discipline on the child. (See *Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [the father's refusal to acknowledge his inappropriate disciplinary techniques supported a finding that there were no reasonable means to protect the child absent removal from the father's custody].) Based on father's repeated use of excessive physical discipline on M.C., and his refusal to accept responsibility for his conduct, the court properly found there were no reasonable means of protecting M.C. without removing the child from father's custody.

## **DISPOSITION**

We affirm the juvenile court's jurisdiction findings and disposition orders.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.